



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 3, 2019

Ms. Deanne Lin
Assistant County Attorney
Harris County Attorney's Office
1019 Congress Street, 15th Floor
Houston, Texas 77002

OR2019-18362

Dear Ms. Lin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 773515 (C.A. File No. 19PIA0293).

The Harris County Flood Control District (the "district") received a request for information pertaining to a specified bridge project during a stated period of time. You indicate the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.111 of the Government Code excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party, with which the governmental body establishes it has a privity of interest or common deliberative process. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body.

You assert the submitted information consists of advice, opinions, and recommendations of employees of the district and a third-party consultant with which the district shares a privity of interest. You state the information at issue relates to the district's policymaking pertaining

to the design and construction of a bridge. You further state the information at issue consists of draft documents pertaining to the district's policymaking. We understand some of the drafts at issue, which we indicated, have been or will be released to the public in their final forms. Accordingly, the district may withhold the drafts we indicated under section 552.111 of the Government Code.

However, you do not explain whether the remaining draft documents were intended to be released in their final forms. Thus, with respect to this information, we must rule conditionally. To the extent the remaining draft documents at issue will be released to the public in their final forms, the district may withhold those draft documents in their entireties under section 552.111 of the Government Code. To the extent the remaining draft documents will not be released to the public in their final forms, the district may not withhold them in their entireties under section 552.111. Nevertheless, in that instance, we find portions of the information at issue consist of advice, opinions, or recommendations on the policymaking matters of the district. Accordingly, with respect to the draft documents that will not be released to the public in their final forms, the district may withhold the information we marked under section 552.111 of the Government Code. We find the remaining information at issue is general administrative and purely factual information or does not pertain to policymaking. Thus, we find you have failed to demonstrate the remaining information consists of internal communications containing advice, opinions, or recommendations on the policymaking matters of the district. Therefore, to the extent the district will not release the remaining draft documents to the public in their final forms, the district may not withhold any portion of the remaining information under section 552.111 of the Government Code on the basis of the deliberative process privilege.

In summary, the district may withhold the draft documents we indicated under section 552.111 of the Government Code. To the extent the district will release the remaining draft documents to the public in their final forms, the district may withhold those draft documents in their entireties under section 552.111 of the Government Code. To the extent the district will not release the remaining draft documents to the public in their final forms, the district may withhold the information we marked under section 552.111 of the Government Code within the draft documents, but must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Blake Brennan', written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 773515

Enc. Submitted documents

c: Requestor
(w/o enclosures)